

General Information Letter: Federal law prohibits a state from taxing most forms of retirement income of nonresident individuals.

September 25, 2001

Dear:

This is in response to your letter dated September 17, 2001. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200. The nature of your question and the information provided require that we respond only with a GIL.

Therein you state as follows:

We are having a problem with our Missouri State Tax. We live in Illinois, but both of us work in Missouri so we pay Missouri taxes. I [xxxxxxxxxxxx], am also a USAF retiree, and I collect retirement pay. I called the Illinois tax office and was told that my retirement should be classed as an Illinois tax and it ...(was)... therefore not subject to Illinois or Missouri state tax.

The tax office in Missouri is saying I must pay Missouri State tax on my retirement pay. When I explained this situation to the person in the Illinois tax office, their advice was to write to your office, explain my problem, and ask you to supply me with the Law which states my retirement pay is not subject to Missouri state tax, but falls under the jurisdiction of Illinois, as this is where I reside.

Your assistance in furnishing me with the correct Law will be greatly appreciated. A quick response would also be appreciated as I received a bill from Missouri against my 1999 state tax, for over \$700. This is the amount Missouri states is owed against my military retirement, which according to the Illinois tax office, should be under the jurisdiction of the resident state, which in my case is Illinois.

Please be advised that Section 203(a)(2)(f) of the Illinois Income Tax Act, 35 ILCS 5/203(a)(2)(F) (2000) provides a deduction from adjusted gross income (AGI) for distributions received from any retirement or disability plan for employees of any governmental agency if the distributions were included in the computation of federal AGI. Therefore, military retired pay and military disability retired is not subject to Illinois income taxation. If any military retired pay or military disability retired pay is included in federal AGI, it can be subtracted on the Illinois return. If any military retired pay or military disability retired pay is not included in federal AGI, it would not be subject to Illinois income

tax because the starting point in determining base income for purposes of determining such tax begins with federal AGI. There is no requirement that such pay be added back on the Illinois return.

Regarding the issue of who has jurisdiction to tax this military retirement income, were it taxable, IITA Section 301(a) states that "all items of income or deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State (Illinois)." Since you are a resident of Illinois, the income in question, and the deduction therefore, are both allocable to Illinois. Illinois law, however, cannot and does not control the question of whether Missouri also has jurisdiction to tax this income under some principle of Missouri law. To ameliorate the circumstances where double taxation of income does occur, Illinois provides for its residents a tax credit for taxes paid to other states at IITA Section 601(b)(3). Unfortunately, since the military retirement income is not being taxed by Illinois but only Missouri, the credit will be inapplicable here.

Please take note, however, that a federal statute, P. L. 104-95 (4 U.S.C.A. 114), applicable to amounts received after December 31, 1995, provides that "(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State)." Thus, assuming your military retirement income is of a type covered by this federal law (and its coverage does extend to governmental retirement plans established under Internal Revenue Code Section 414(d)), then Missouri can only lawfully tax that income if you meet that state's test for residency. We suggest that you pursue this line of inquiry and hope that you obtain favorable results.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax